

NEWS

NEW JERSEY DEPARTMENT OF

LWD

LABOR & WORKFORCE DEVELOPMENT
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Department of Labor and
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PO Box 110
Trenton, New Jersey
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RE: Proposed Amendment: N.J.A.C. 12:62-2.4
Public Works Contractor Registration Denial,
Suspensions or Revocation of Registration

Attached please find the above-referenced matter which was published in the August 16, 2004 *New Jersey Register*.

If you have any questions, please contact Frederick S. Cohen, Regulatory Officer I at 609-777-2960.

LABOR AND WORKFORCE DEVELOPMENT

(a)

DIVISION OF WAGE AND HOUR COMPLIANCE

Public Works Contractor Registration

Denial, Suspensions or Revocation of Registration

Proposed Amendment: N.J.A.C. 12:62-2.4

Authorized By: Albert J. Kroll, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:11-56.48 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-312.

A public hearing on the proposed amendments will be held on the following date at the following location:

Friday, September 24, 2004

10:00 A.M. to 12:00 Noon

New Jersey Department of Labor

13th Floor Auditorium

Trenton, New Jersey

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by October 15, 2004 to:

Frederick S. Cohen, Regulatory Officer

Office of Regulatory Services

Department of Labor

PO Box 110—13th Floor, Suite G

Trenton, New Jersey 08625-0110

Fax: (609) 292-8246

If you need this document in Braille, large print or audiocassette, please contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The Department conducts an on-going review of its enforcement responsibilities under the New Jersey Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. and the rules promulgated thereunder, N.J.A.C. 12:62. As a result, it has concluded that N.J.A.C. 12:62-2.4(a)5 requires an amendment. That paragraph, which relates to the denial, suspension or revocation of a contractor's public works registration certificate, presently provides that a contractor can be so penalized, if he or she contracted for use in the completion of a public work, with any subcontractor or independent contractor required to register under the Act who is not so registered. In order to properly fulfill its enforcement obligations as assigned to it under the Act by the Legislature, and in order to further prevent persons from violating the intent thereof, the Department proposes to amend N.J.A.C. 12:62-2.4(a)5 so that a contractor could face a suspension or revocation of his or her contractor registration certificate or the denial of the renewal thereof if he or she has:

"Contracted for use in the completion of a public work any subcontractor or independent contractor required to register under the Act who is not so registered or has utilized a subcontractor who has subcontracted his or her work to any subcontractor or independent contractor who is not so registered."

Moreover, in the course of its normative administration of the Public Works Contractor Registration Act, the Department has further determined that N.J.A.C. 12:62-2.4(c) requires amendment. Specifically, the subsection requires the incorporation therein of a set of criteria which the Department will consider in imposing a term of suspension or revocation. By so doing, the Department will formalize the use and application of standardized criteria heretofore non-regulatorily referenced before a contractor's registration certificate is either suspended or revoked. By further clarifying N.J.A.C. 12:62-2.4, those persons subject to the provisions thereof will have a clear understanding of the process whereby the Department will reach its determination as to the severity, or leniency, of the sanction imposed for violation of the provisions of the New Jersey Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., and the rules promulgated thereunder.

Thus, N.J.A.C. 12:62-2.4(c) will note that, in determining the length of time for which a contractor's registration certificate may be revoked or suspended, the following criteria shall be considered:

1. The record of previous violations by the contractor of the Public Works Contractor Registration Act and/or the New Jersey Prevailing Wage Act;

2. Whether the general contractor or subcontractor in question should reasonably have known that a subcontractor with whom he or she is in privity had not registered, pursuant to the Act or had had his or her registration revoked or suspended or had let his or her registration lapse;

3. The total number of unregistered subcontractors at the work site(s) in question and the size and scope of the public works project(s); and

4. Whether the general contractor or subcontractor in privity to the subcontractor who is not registered pursuant to the Act obeyed the Department's directive to remove the unregistered subcontractor or independent contractor from the work site and thus cured the violation of the Act.

The Department is of the belief that it is in the best interests of all parties that the foregoing proposed amendment be incorporated into N.J.A.C. 12:62.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments to N.J.A.C. 12:62-2.4(a)5 and (c) will have a positive social impact in that they will permit the Department to more effectively enforce the Public Works Contractor Registration Act. By further clarifying the bases upon which a contractor may be denied a registration certificate renewal or may have the certificate suspended or revoked, as well as elucidating the criteria to be considered in the imposition of a term of suspension or revocation, the Department will be in a better position to protect the best interests of the workers, contractors and public bodies engaged in public works. Since there are vast sums of money being expended on public works construction projects, particularly in light of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, N.J.S.A. 18A:7G-1 et seq., to which the State and eight billion dollars have been committed, there thus exists a further compelling impetus to make certain that only those contractors and subcontractors who abide by all of the labor laws of this State, including the Public Works Contractor Registration Act, benefit thereby. Additionally, inherent in a thorough and carefully delineated enforcement of the Act by the Department, is the assurance that contractors and subcontractors who engage in public works projects are qualified to do so. Included in that assurance is the maintenance of a safe work environment for all those who labor on public works projects, as well as a guarantee that those for whom they labor are law-abiding contractors and subcontractors who will, quite literally, pay them their due. Lastly, the proposed amendment to N.J.A.C. 12:62-2.4(c) will also ensure that the responsibilities of those contractors, and subcontractors who benefit from the State's largesse by engaging in public work construction projects will not be attenuated. Rather, responsibility to adhere to the tenets of the Act and its attendant rules is an on-going one that flows from contractor to subcontractor to independent contractor for to do otherwise, would run counter to the very purposes of the New Jersey Public Works Contractor Act.

Economic Impact

The proposed amendments at N.J.A.C. 12:62-2.4(a)5 and (c) will have no economic impact beyond that which results from the Department's existing enforcement of the Act and rules promulgated in accordance therewith at N.J.A.C. 12:62. Those rules, including the proposed amendments, are intended to better equip the Department to enforce the labor laws and ensure that disreputable public works contractors who violate those laws do not receive the benefit of public tax dollars. To the extent that the Department's efforts in this regard result in an increase in expense to those contractors not currently complying with the labor laws, in the way of higher labor costs or lost business opportunities, the existing rules, including the proposed amendments, will have a negative impact upon those individuals. Likewise, if a contractor, subcontractor or independent contractor has his or her contractor registration certificate suspended or revoked, obviously the economic impact will be severe since that person and business will not be permitted to participate in public work construction or renovation activities. However, adherence to the tenets of the Act and these rules will obviate the risk of economic loss and will produce a positive economic impact.

PROPOSALS

Federal Standards Statement

The proposed amendments at N.J.A.C. 12:62-2.4(a)5 and (c) do not exceed standards or requirements imposed by Federal laws as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. The proposed amendments enable the Department to implement the provisions of the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq. As a result, a Federal standards analysis is not required.

Jobs Impact

There will be no anticipated increase or decrease in jobs as a result of the proposed amendments.

Agriculture Industry Impact

The proposed amendments at N.J.A.C. 12:62-2.4(a)5 and (c) will not have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments at N.J.A.C. 12:62-2.4(a)5 and (c) do not impose any reporting, recordkeeping or other compliance requirements on small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. or on any other size business entity. As to what effect the proposed amendments will have on such businesses, as indicated above, they will have no economic impact beyond that which results from the Department's existing enforcement of the Act and rules promulgated in accordance therewith at N.J.A.C. 12:62. Those rules, including the proposed amendments, are intended to better equip the Department to enforce the labor laws and ensure that disreputable public works contractors who violate those laws do not receive the benefit of public tax dollars. To the extent that the Department's efforts in this regard result in an increase in expense to those contractors not currently complying with labor laws, in the way of higher labor costs or as a result of business opportunities lost due to the suspension or revocation of a contractor registration certificate, the proposed amendments will have a negative impact.

Smart Growth Impact

The Department does not anticipate that the proposed amendments will have any impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12:62-2.4 Denial, suspension or revocation of registration

(a) As an alternative to or in addition to sanctions provided in N.J.A.C. 12:62-2.5, a certificate of registration may be denied, suspended or revoked if the registrant or applicant or an officer, partner, director, stockholder, or agent of the applicant or registrant has at any time:

1.-4. (No change.)

5. Contracted for use in the completion of a public work any subcontractor or independent contractor required to register under the Act who is not so registered or **has utilized a subcontractor who has subcontracted his or her work to any subcontractor or independent contractor who is not so registered.**

(b) (No change.)

(c) The registration of a contractor shall not be revoked or suspended for a period beyond five years. **However, in determining the length of time for which a contractor's registration may be revoked, the following criteria shall be considered:**

1. The record of previous violations by the contractor of the Public Works Contractor Registration Act and/or the New Jersey Prevailing Wage Act;

2. Whether the general contractor or subcontractor in question should reasonably have known that a subcontractor with whom he or she is in privity had not registered, pursuant to the Act or had had his or her registration revoked or suspended or had let his or her registration lapse;

3. The total number of unregistered subcontractors at the work site(s) in question and the size and scope of public works project(s); and

4. Whether the general contractor or subcontractor in privity to the subcontractor who is not registered pursuant to the Act obeyed the Department's directive to remove the unregistered subcontractor from the work site and thus cured the violation of the Act.

(d) (No change.)